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QUESTIONS PRESENTED

1. Whether the court below correctly concluded that admiralty jurisdiction extended to respondent's complaint under the Limitation of Vessel Owner's Liability Act, 46 U.S.C. App. § 181 *et seq.*, brought to limit liability for alleged negligence in performing maritime repair activities on navigable water, when that alleged negligence resulted in closing the navigable waterway for more than a month.

2. Whether this Court should develop and apply a different test for admiralty jurisdiction over tort cases when those cases involve injury to "land-based" parties—a test requiring consideration of all the circumstances of the case, a balancing of federal and state interests, and an ad hoc policy assessment as to whether recognizing jurisdiction will advance the purposes of the jurisdictional grant—when the Admiralty Extension Act already expressly provides that admiralty jurisdiction shall extend to and include all cases of injury caused by a vessel on navigable water, "notwithstanding that such damage or injury be done or consummated on land." 46 U.S.C. App. § 740.

PARTIES TO THE PROCEEDINGS

Petitioner in No. 93-762, Jerome B. Grubart, Inc., was a claimant in the limitation proceeding initiated in the United States District Court for the Northern District of Illinois by respondent Great Lakes Dredge & Dock Company, and an appellee before the Seventh Circuit. Petitioner in No. 93-1094, the City of Chicago, was a defendant in the limitation proceeding and an appellee before the Seventh Circuit.

Respondent's Rule 29.1 statement appears at Opp. Cert. ii.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

No. 93-762

JEROME B. GRUBART, INC.,
Petitioner,
v.
GREAT LAKES DREDGE & DOCK COMPANY,
Respondent.

No. 93-1094

CITY OF CHICAGO,
Petitioner,
v.
GREAT LAKES DREDGE & DOCK COMPANY,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENT GREAT LAKES DREDGE & DOCK COMPANY

STATEMENT OF THE CASE

Factual Statement. The Chicago River ("the River") is an inland navigable waterway some 24 miles long, connecting Chicago Harbor on Lake Michigan with the Mississippi River, via the Illinois Waterway System. The River is traversed by numerous drawbridges as it flows through the City of Chicago ("the City"), including the Kinzie Street Bridge near the Merchandise Mart.

Adjacent to parts of the bridges in the River are timber pile clusters known in the maritime trade as "dolphins". The dolphins protect both the bridges and maritime traffic from the dangers of allisions. Pet. App. 10a-11a.[1] They also aid navigation by permitting tugboat pilots navigating the River to engage in "warping"—a maneuver in which the dolphins are used as a fulcrum to turn large-beam barges and barge flotillas in tight quarters such as the navigable channel near Kinzie Street—and by serving as points of reference similar to buoys to assist pilots in charting a course in the channel. J.A. 53, 57, 59. In contrast to many pilings on land, pilings on navigable waterways—like the pilings at issue here—are generally made of timber rather than steel. Although the timber naturally rots in water over time and needs to be replaced, timber dolphins minimize the damage to vessels from allisions. Steel dolphins would protect the bridge structure, and would last longer in water, but would cause far greater damage to and could readily sink a vessel if accidentally struck. *Id.* at 45-46, 52-53, 60.

In December 1990 the City solicited bids from marine firms for replacement of the timber dolphins near five drawbridges on the River, including the Kinzie Street Bridge. Pet. App. 25a. The dolphins near those bridges had deteriorated and represented a threat to navigation. J.A. 54, 70; Ct. App. Appendix 101. The specifications noted that the branches of the River were navigable streams, and that contractors must comply with marine regulations "so that river traffic may be protected and any river obstruction avoided." J.A. 25. Contractors were expressly "advised that the passage of vessels has first priority." *Id.* at 27. The Contractor was to supply all the necessary equipment, which "shall include barges, cranes, [and] tugs." *Id.* at 26.

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[1] References to "Pet. App." are to the Appendix to the Petition for Certiorari in No. 93-1094. References to "J.A." are to the Joint Appendix filed with this Court. References to "Ct. App. Appendix" are to the Appendix to Brief of Appellant filed with the Seventh Circuit.

Respondent Great Lakes Dredge & Dock Company ("Great Lakes") was awarded the contract. As contemplated in the City's specifications, the work had to be performed from vessels in the navigable channel, because the dolphins could not be reached by land. Great Lakes used three certified seaworthy vessels to replace the dolphins near the five drawbridges: a tug, the M/V Peach State, and two barges, Barge No. G.L. 136 (J.A. 76) and Barge No. G.L. 150 (J.A. 77). Great Lakes' vessels towed the barges from their berths on the Calumet River to the Cermak Road Bridge, where work began. The flotilla moved north up the River as work was completed on each bridge, from Cermak Road to Washington Street, Madison Street, Chicago Avenue, and finally Kinzie Street. Upon completion of the project the barges were towed back to their Calumet River berths.

Barge No. 136 was equipped with a crane to pull out the old and drive in the new timber pilings. Barge No. 150 transported new pilings from Great Lakes' facilities on the Calumet River to the various work sites, stowed old pilings until work at each site was completed, and then shipped the old pilings back to the Calumet River site for disposal. The barges occasionally transported the crew from one work site to another. Barge No. 136 was "spudded" into the river bed for stability during pile driving operations, but both barges were moved by the tug from time to time during the project to clear the channel for navigation, as required by the contract with the City. Pet. App. 27a; J.A. 47-50, 56-57.

On April 13, 1992, water from the Chicago River entered a freight tunnel running under the River through a breach in the tunnel near the Kinzie Street Bridge, quickly flooding an elaborate tunnel system underlying Chicago's downtown area as well as a number of buildings connected to the tunnels. This event became known as the "Chicago Flood". The breach created an eddy on the River, maritime traffic in the vicinity of the tunnel rupture was disrupted, and the Captain of the Port of Chi-

cago closed all three branches of the River in the downtown Chicago area for more than a month. Pet. App. 2a & n.1.

In the (literal) wake of the Flood, thousands of businesses and individuals filed suit against Great Lakes, alleging that Great Lakes negligently installed the dolphins at the Kinzie Street Bridge site, causing the breach in the tunnel. *See* J.A. 33-34, 43-44. These plaintiffs also alleged that the City was negligent, both in failing to disclose the existence of the tunnel to Great Lakes and in failing to maintain or repair the tunnel.

The Proceedings Below. On October 6, 1992, Great Lakes filed an action in United States District Court for the Northern District of Illinois, under the Limitation of Vessel Owner's Liability Act, 46 U.S.C. App. § 181, *et seq.* J.A. 31-44.[2] The suit sought exoneration from or limitation of liability in connection with the Flood, as well as indemnity and contribution from the City. The City and petitioner Jerome B. Grubart, Inc. ("Grubart") —a Chicago business that had sued Great Lakes in state court and filed a claim in the limitation proceeding— moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

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[2] The Limitation Act provides, in part:

> The liability of the owner of any vessel * * * for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except [in certain cases involving loss of life or bodily injury] exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. [46 U.S.C. App. § 183(a).]

In proceedings under the Limitation Act, the vessel owner deposits the value of the vessel with the court, notice is issued to claimants, the claims are adjudicated, and—if liability is found—the fund is divided pro rata among successful claimants in proportion to the amounts of their respective claims. *Id.* §§ 184, 185; Supplemental Rules for Certain Admiralty and Maritime Claims, Rule F.

The District Court granted the motions on both grounds. It held that it lacked admiralty jurisdiction under both 28 U.S.C. § 1333(1) and the Admiralty Extension Act, 46 U.S.C. App. § 740, because, looking at "the totality of circumstances," "the relevant facts alleged to be present * * * do not involve traditional maritime concerns." Pet. App. 32a, 37a. As the court explained its approach:

> Federal admiralty jurisdiction will be sustained only if a case presents the need to protect maritime commerce through adherence to a uniform and specialized set of rules such as those involving navigation and seaworthiness. There is no compelling reason to adjudicate the host of issues raised by the pleadings under this specialized set of rules. * * * The totality of circumstances lead unyielding to that conclusion. [*Id.* at 37a.]

The Court of Appeals for the Seventh Circuit reversed. It recognized that this Court in *Sisson* v. *Ruby*, 497 U.S. 358 (1990), had articulated the applicable test for admiralty jurisdiction:

> After *Sisson*, in ascertaining the existence of admiralty jurisdiction we ask three questions about the incident giving rise to the alleged wrong: (1) did it occur on the navigable waters of the United States? (2) did it pose a potential hazard to maritime commerce? and (3) was it substantially related to traditional maritime activity? If all three questions are answered in the affirmative, a claim arising out of the incident falls within the admiralty jurisdiction. [Pet. App. 6a.]

The Court of Appeals criticized the District Court for relying instead on the "totality of the circumstances" test announced by the Fifth Circuit seventeen years before *Sisson*. *See Kelly* v. *Smith*, 485 F.2d 520 (5th Cir. 1973), *cert. denied*, 416 U.S. 969 (1974). The Seventh Circuit explained that courts "may not engage in the sort

of policy analysis that apparently informed the district court's decision," under which they find admiralty jurisdiction "only if a case presents the need to protect maritime commerce through adherence to a uniform and specialized set of rules such as those involving navigation and seaworthiness." Instead, "the jurisdictional inquiry must be much more rigidly structured," confined to the three questions posed by this Court in *Sisson*. Pet. App. 7a.

The Court of Appeals answered each of those questions in the affirmative. First, the court noted that there was no dispute that the Chicago River was a navigable waterway or that Great Lakes' vessels were in the waterway as they performed their work. Although petitioners argued that most of the damage occurred on land away from the River, the court concluded that the Admiralty Extension Act answered any such arguments, by providing that "admiralty jurisdiction 'shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.'" Pet. App. 8a (quoting 46 U.S.C. App. § 740).

Second, the Seventh Circuit concluded that the incident posed a potential hazard to maritime commerce. As the court explained, this question was easily answered in this case, because the incident actually resulted in the closing of the Chicago River to maritime commerce for more than a month. Pet. App. 9a-10a.

Finally, the court ruled that the activity in which Great Lakes was engaged was substantially related to traditional maritime activity. The court found the parties' dispute over whether the dolphins were intended to protect bridges or also to protect ships and serve as navigational aids to be largely beside the point. As the court explained, this Court in *Sisson* required consideration only of "the general character of the activity." 497 U.S. at 365.

> There is no dispute that dolphins are capable of, and *generally* do, serve all of the purposes mentioned, two of which, protecting ships from collisions with bridges and aiding navigation, are unquestionably related to maritime activity. It follows logically that the installation of dolphins relates to maritime activity. [Pet. App. 10a-11a (emphasis in original).]

The Seventh Circuit also reversed the District Court's decision to dismiss Great Lakes' complaint for failure to state a claim under the Limitation Act. The court concluded that the record was inadequate to determine whether Great Lakes' negligence, if any, was the result of unreasonable activity by a managerial employee or the result of misconduct by one of its laborers at the job site. "Because Great Lakes' ability to invoke the Limitation Act rests upon these precise determinations, the district court erred in dismissing the complaint." Pet. App. 13a.

Grubart filed a petition for rehearing and suggestion for rehearing en banc, which was denied without recorded dissent. *Id.* at 19a. The City and Grubart then filed petitions for certiorari, each limited to the jurisdictional issue. This Court granted the petitions and consolidated the cases.

SUMMARY OF ARGUMENT

This Court's recent opinion in *Sisson* v. *Ruby*, 497 U.S. 358 (1990), set forth the test for admiralty jurisdiction in tort cases. Under that test, admiralty jurisdiction extends to cases in which the incident giving rise to the alleged wrong occurred on navigable water, posed a potential hazard to maritime commerce, and arose from an activity that is substantially related to traditional maritime activity. In this case, petitioners claim that Great Lakes caused the flood damage by negligently replacing dolphins in the Chicago River. The incident giving rise to that alleged wrong—Great Lakes' pile driving operations—took place on the navigable waters of the Chicago River. The incident plainly posed a threat to maritime

commerce; indeed, the threat was realized with the closing of the River for more than a month. Finally, the general activity that gave rise to the incident—maritime repair work—is closely related to traditional maritime activity. Maritime repair work on a navigable waterway to facilitate safe navigation is at least as closely related to traditional maritime activity as the docking activity found to satisfy this jurisdictional requirement in *Sisson*.

Petitioners' efforts to defeat admiralty jurisdiction under *Sisson* are unavailing. Although not disputing that Great Lakes' work replacing the dolphins took place on navigable water, petitioners emphasize that the injury—the flooding of basements—occurred on land. The plain language of the Admiralty Extension Act, however, makes that fact irrelevant to the jurisdictional analysis. Congress provided that admiralty jurisdiction "shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, *notwithstanding that such damage or injury be done or consummated on land*." 46 U.S.C. App. § 740 (emphasis added). This is a case in which damage or injury is alleged to have been caused by vessels on navigable water. The Extension Act therefore applies, and brings this case within the admiralty jurisdiction. Petitioners' efforts to read additional, vague tests into the Act—requiring that the injury be "reasonably contemporaneous" with the wrong and within the "reach" of the vessel—cannot be squared with the unambiguous statutory language, and find no support in the legislative history.

The Extension Act defeats petitioners' other arguments under *Sisson* as well. Petitioners assert that flooded basements pose no threat to maritime commerce, but the focus under *Sisson* is on the alleged wrong—in this case, negligent pile driving—rather than the injury. A focus on where the injury occurred is flatly inconsistent with the Extension Act. By the same token, the City cannot escape the conclusion that the pertinent activity in this

case is maritime repair work, which is substantially related to traditional maritime activity.

Perhaps in light of the foregoing, petitioners devote most of their efforts to arguing that this Court should abandon the four-year-old *Sisson* test and adopt a new one for tort cases in which the interests of so-called "land-based parties" are at stake. Again the Admiralty Extension Act defeats petitioners' argument. The interests of land-based parties are at stake here for one reason and one reason only: because the injury occurred on land. The Extension Act plainly states that such a fortuity will not defeat admiralty jurisdiction. Creating and applying different tests for admiralty jurisdiction depending upon whether the injury occurred on water or on land would be contrary to the plain language of the Extension Act.

The exact content of the various new tests proposed by petitioners and their amici is unclear, but their approach departs from *Sisson* in requiring consideration of the "totality of the circumstances" and an ad hoc policy judgment, balancing federal and state interests, to determine whether those circumstances support the exercise of admiralty jurisdiction. Jurisdictional tests should be clear, simple, easily applied, and lead to predictable results. Petitioners' ad hoc balancing test based on policy judgments and consideration of all the circumstances is indeterminate and manipulable, and will lead to chaotic results. This Court should decline the invitation to embrace such an approach, and should instead reaffirm the more circumscribed and focused test articulated in *Sisson*.

ARGUMENT

I. THERE IS ADMIRALTY JURISDICTION OVER THIS CASE UNDER 28 U.S.C. § 1333(1) AND THE ADMIRALTY EXTENSION ACT

In *Sisson* v. *Ruby*, 497 U.S. 358 (1990), this Court unanimously upheld the exercise of admiralty jurisdiction over a yacht owner's effort to limit his liability arising from a fire on the yacht while it was docked at a marina. The Court explained that the test for admiralty jurisdiction over tort cases had both a situs and a nexus component. In addition to occurring on navigable water, the incident giving rise to the alleged wrong must also have the potential to disrupt maritime commerce, and arise from an activity substantially related to traditional maritime activity. *Id.* at 362-367. The Court of Appeals correctly applied this test in upholding admiralty jurisdiction in this case.

A. The Incident Giving Rise To The Alleged Wrong Occurred On Navigable Water

There is no dispute that the Chicago River is navigable water of the United States. *See Escanaba Co.* v. *Chicago*, 107 U.S. 678, 683 (1883) ("Chicago River and its branches must, therefore, be deemed navigable waters of the United States"); *The John B. Lyon*, 33 F. 184 (N.D. Ill. 1887) (admiralty jurisdiction extends to a barge on the North Branch of the Chicago River). The contract itself provided that "[t]he Contractor's attention is directed to the fact that the Branches of the Chicago River involved are navigable streams." J.A. 25. Great Lakes' vessels engaged in replacing the dolphins were actually in the navigable channel, Pet. App. 7a, and frequently had to be moved throughout the course of the job not only as work progressed but also to allow maritime traffic to proceed through the channel. *Id.* at 27a; J.A. 47-50, 56-57. The work took place in navigable water, as the

old pilings were removed from the River and new pilings driven into the riverbed.[3]

B. The Admiralty Extension Act Precludes Petitioners' Efforts To Have Jurisdiction Turn On Where The Damage Was Done

Petitioners do not dispute that Great Lakes conducted its maritime repair work on navigable waters of the United States, and they seek to hold Great Lakes liable for the manner in which it conducted that work. The central burden of their various arguments, however, is that the damage to them occurred on land. This is not only the basis on which they seek to minimize the significance of the fact that the repair work took place on a vessel on navigable water, but also the basis on which they argue that there was no potential hazard to maritime commerce (*see infra* at [illegible]), the basis on which they contend that there was no substantial relation to maritime activity (*see infra* at 29-30), and the basis on which they urge the Court to adopt a new test for admiralty jurisdiction. *See infra* at 30-32.

At every turn, however, petitioners are met by the Admiralty Extension Act, 46 U.S.C. App. § 740. That statute provides:

> The admiralty and maritime jurisdiction of the United States shall extend to and include *all* cases of damage or injury, to person or property, caused by a vessel on navigable water, *notwithstanding that such damage or injury be done or consummated on land.* [Emphases added.]

The Act goes on to provide that "[i]n any such case suit may be brought * * * according to the principles of law

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[3] The dolphins were of course located just outside the channel itself, *see* J.A. 30, but that in no way alters the conclusion that they were in navigable water. As the Seventh Circuit noted, this Court has held that the navigable waterway extends from shore to shore. *See* Pet. App. 8a (citing *Greenleaf Johnson Lumber Co.* v. *Garrison*, 237 U.S. 251, 263 (1915)).

and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water." *Id.*

In considering each of petitioners' contentions, the Court should ask what the determinative factor is under petitioners' analysis. In each case that factor is that the damages were sustained on land. The Court should then consider whether that factor can be determinative of jurisdiction in light of the Admiralty Extension Act, which specifies that jurisdiction exists "notwithstanding that [the] damage or injury be done or consummated on land." 46 U.S.C. App. § 740. The answer is plainly no. In short, petitioners' entire case depends upon ignoring the plain language of the Admiralty Extension Act.[4] For that reason, we devote considerable attention to the Act at the outset.

This Court has frequently reiterated that "[i]n a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." *Estate of Cowart* v. *Nicklos Drilling Co.*, 112 S. Ct. 2589, 2594 (1992). *See Reves* v. *Ernst & Young*, 113 S. Ct. 1163, 1169 (1993); *Good Samaritan Hosp.*

[4] Petitioner Grubart candidly recognizes as much, stating that "[p]erhaps the Seventh Circuit's statement that Grubart's argument would 'render the Admiralty Extension Act meaningless' deserves more scrutiny. It is not implausible that modern judicial developments in this area have overtaken the statutory enactment." Grubart Pet. at 15 n.5. Needless to say, we do not think this Court should embrace an analysis that would render an Act of Congress meaningless, *see, e.g., Astoria Federal Savings & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 112 (1991) ("we construe statutes, where possible, so as to avoid rendering superfluous any parts thereof"); *Rosado* v. *Wyman*, 397 U.S. 397, 415 (1970) ("courts should construe all legislative enactments to give them some meaning"), nor do we think such an approach could be justified on the ground that the Act—a jurisdictional statute—had somehow been "overtaken" by judicial developments.

v. *Shalala*, 113 S. Ct. 2151, 2157 (1993). This is particularly true in interpreting jurisdictional statutes, where clarity and certainty are critical. *See Palmore* v. *United States*, 411 U.S. 389, 396 (1973) ("Jurisdictional statutes are to be construed 'with precision and with fidelity to the terms by which Congress has expressed its wishes' ") (quoting *Cheng Fan Kwok* v. *INS*, 392 U.S. 206, 212 (1968)). The Extension Act, by its plain terms, is clearly applicable to this case.

1. *Great Lakes' craft were "vessel[s] on navigable water."* There is no dispute that Great Lakes' vessels performed their work under the contract on navigable water. Nor can there be any serious dispute that Great Lakes' crafts qualified as "vessels".[5] The Admiralty Extension Act itself does not define the word "vessel," but the applicable definition of the term is found in Title 1 of the United States Code, which provides that "[t]he word 'vessel' includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. § 3. The record here plainly demonstrates that each of the three craft used in performing the dolphin replacement contract satisfies this definition. Both barges were "load line certified" by the American Bureau of Shipping. J.A. 71.[6] The tug M/V Peach State was itself a seaworthy vehicle. All three of

[5] Petitioners disputed that proposition below, but both the District Court and the Court of Appeals rejected their arguments. The District Court, "[m]indful of the transportation functions performed by each," found "that the two barges and the launch utilized by Great Lakes to perform the pile removal and driving activity required under the contract were vessels for admiralty purposes." Pet. App. 36a. The Court of Appeals likewise found that Great Lakes' barges were vessels because "[t]here is no doubt" that they "are capable of, and have performed, * * * transportation functions." *Id.* at 8a. Neither Grubart nor the City resurrects the twice-defeated argument that Great Lakes' craft are not vessels for purposes of the Admiralty Extension Act.

[6] To qualify as "load line certified," a barge must be surveyed and meet seaworthiness criteria set out at 46 C.F.R. Part 42.

these craft were capable of being used "as a means of transportation on water," and were in fact used in that manner before, during, and after the work on the Chicago River. *See* J.A. 71-74.[7]

Grubart, but not the City, suggests that the Admiralty Extension Act does not apply because there is no allegation that one of the vessels itself caused the breach of the tunnel. But this Court has long recognized that "caused by a * * * vessel" is "customary legal terminology of the admiralty law which refers to the vessel as causing the harm although the actual cause is the negligence of the personnel in the operation of the ship." *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, 224 (1945). The Court applied this rule to the Admiralty Extension Act in *Gutierrez* v. *Waterman Steamship Corp.*, 373 U.S. 206, 210 (1963) ("There is no distinction in admiralty between torts committed by the ship itself and by the ship's personnel while operating it").

Nor is it relevant, as Grubart suggests, that "it was an arguable appurtenance to that barge, either the crane or the pile driver, that is implicated in the breach." Grubart Br. at 35. This Court has squarely held that the Admiralty Extension Act applies where the damage is allegedly caused by an appurtenance to a vessel. As the Court explained in *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202 (1971), its earlier decision in *Gutierrez* turned "not on the 'function' the stevedore [in *Gutierrez*] was performing at the time of his injury, but, rather, upon the fact that his injury was *caused by an appurtenance of a ship * * * which the Court held to be 'an injury,*

[7] The Limitation of Vessel Owner's Liability Act applies, except as otherwise noted, to "all seagoing vessels," a term defined at 46 U.S.C. App. § 183(f), "and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, *barges*, and lighters." 46 U.S.C. App. § 188 (emphasis added). Although not directly applicable under the Admiralty Extension Act, this definition indicates that the craft at issue here were vessels within commonly-accepted definitions.

*to person * * * caused by a vessel on navigable water'* which was consummated ashore" under the Admiralty Extension Act. 404 U.S. at 210-211 (emphasis added).[8]

This understanding of the term "vessel" is not limited, as Grubart would like, to include only the barge and any *defective* appurtenances. *See* Grubart Br. at 34-35. In support of this argument, Grubart seizes upon language in *Margin* v. *Sea-Land Services, Inc.*, 812 F.2d 973 (5th Cir. 1987), in which the court refers to such "defective appurtenances." But the question, as explained in *Victory Carriers*, is whether an appurtenance of the vessel is alleged to have caused the injury. The appurtenance may —as in *Margin*—be alleged to have caused the injury because it was defective. It is equally true, however, that —as here—it may be alleged to have caused the injury due to some negligence in its use. In either case, the Admiralty Extension Act applies.

2. *Petitioners seek relief and Great Lakes seeks limitation of liability for injury allegedly "caused by a vessel on navigable water."* This case also satisfies the "causation" requirement of the Extension Act. The fact that Great Lakes denies liability altogether is no impediment to application of the Act. In its complaint, Great Lakes sought alternatively exoneration from liability and limitation of liability. J.A. 34-35. The pertinent admiralty rules specify that a complaint under the Limitation of Vessel Own-

[8] *See also Pryor* v. *American President Lines*, 520 F.2d 974, 978 n.3 (4th Cir. 1975) ("The Supreme Court has interpreted the [Extension] Act as extending the ship's liability for its crew and its 'appurtenances' "), *cert. denied*, 423 U.S. 1055 (1976); *Shea* v. *Rev-Lyn Contracting Co.*, 868 F.2d 515, 518 (1st Cir. 1989) (maritime crane "was truly an appurtenance of the barge"); *In re Exxon Valdez*, 767 F. Supp. 1509, 1512 (D. Alaska 1991) ("A ship *or its appurtenances* must proximately cause an injury on shore to invoke the Admiralty Extension Act and the application of maritime law") (emphasis added); *Maryland Port Administration* v. *S.S. American Legend*, 453 F. Supp. 584, 587 (D. Md. 1978) ("The language 'caused by a vessel on navigable water' has been construed to encompass not only accidents caused by a ship itself but also accidents caused by an appurtenance of the ship").

er's Liability Act "may demand exoneration from as well as limitation of liability," Supplemental Rules for Certain Admiralty and Maritime Claims, Rule F(2), and no court has accepted the City's sophistic suggestion that because Great Lakes denies that its vessels caused any injury at all, the Extension Act does not apply. *See* City Br. at 39-40.

Instead, the appropriate inquiry is whether the claims prompting the vessel owner to seek limitation of liability allege that his vessel caused damage or injury. *See* 46 U.S.C. App. § 185. Great Lakes specifically noted in its complaint the pending allegations that it caused the injury or damage. J.A. 33-34, 43-44.[9] Both Grubart (Br. at 4) and the City (Pet. at 18 n.5) continue to allege before this Court that Great Lakes caused the Flood. Those allegations bring this proceeding within the Admiralty Extension Act.

Contrary to petitioners' contentions, reading the Extension Act as written does not result in an unconscionable extension of admiralty jurisdiction. The plain language of the statute contains meaningful limitations. First, the Act applies only to situations involving vessels on navigable waters. Second, it applies only to claims that such a vessel caused the damage or injury.

The City rejects the view that the Act extends jurisdiction to injuries alleged to have been caused by the vessel in navigable water, arguing that this would cause practical problems. City Br. at 39. As the City sees it, under this approach a court cannot decide whether it has

[9] As the District Court noted:

> According to the Class Complaint, Great Lakes, in pounding and driving the pilings into the riverbed, caused one or more of the following conditions: an actual hole or breach of the tunnel wall; a weakening of the tunnel wall creating cracks or weakness in the structural integrity of the tunnel; a compacting of the earth around the tunnel walls creating excessive pressure on the tunnel; and such other events which proximately caused the tunnel wall to partially collapse or break. [Pet. App. 23a.]

jurisdiction until it decides causation, and so cannot decide jurisdiction until after trial. And if the trier of fact finds no causation, then the basis for the exercise of jurisdiction disappears. *Id.*

Far from being a novel conundrum, this is an issue this Court has addressed before in other contexts. For example, there is federal jurisdiction under 28 U.S.C. § 1346(b) over claims against the United States for injury "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment * * *." Jurisdiction under that provision does not hinge on whether the employee actually caused the injury, but rather on the allegations in the complaint. The United States is free to deny liability—to claim that its employee did not cause the injury —without at the same time defeating federal court jurisdiction. So too here Great Lakes is free to deny petitioners' claims that it caused the flood damage without defeating admiralty jurisdiction over those claims.

The City itself candidly acknowledges that this is the general rule for deciding whether jurisdiction exists under the other bases of federal jurisdiction. *See* City Br. at 40 ("Thus the rule has emerged in federal question cases that as long as a complaint is not wholly frivolous on its face, it is sufficient to confer jurisdiction under 28 U.S.C. § 1331") (citing cases).[10] Rather than applying the rule that is applied to every other ground of federal jurisdiction, the City argues that "a special rule of proximate causation should be applied under the Extension Act to ensure that jurisdiction can be ascertained without fact-intensive inquiries." City Br. at 12. This "special rule" proposed by the City consists of a judicial amendment of the plain language of the Extension Act.

According to the City, the economical and direct phrase "injury * * * caused by a vessel on navigable water" in

[10] Not even petitioners' amici can endorse the City's proposal to abandon the established manner in which the Court deals with jurisdictional allegations. *See* Br. of the National Conference, *et al.*, at 18-19 & n.9.

the Extension Act should be read as if Congress had instead said "injury occurring 'reasonably contemporaneously with negligent conduct occurring on navigable waters' and not 'at a place farther from navigable waters than the reach of the vessel, its appurtenances, and cargo.'" *See* City Br. at 45. Such judicial amendment of the statutory language would allow the City to achieve its goal of being able to assert that Great Lakes caused the injury, *see* City Pet. at 18 n.5 ("Great Lakes' negligent pile driving was the proximate cause of the tunnel flood"), without thereby admitting that the Extension Act applied. In short, the City argues that "caused by" means one thing for purposes of liability, and something quite different for purposes of jurisdiction.

This approach does not avoid "fact-intensive inquiries" at all; it simply shifts the focus from notions of proximate cause with which courts are familiar to the new "special rule" advocated by the City. The "fact-intensive inquiries" are avoided not by devising "special rules" but by adhering to the approach this Court follows in every other area in which jurisdictional allegations are at issue. That approach tests jurisdiction not by trying the merits but instead by accepting the pertinent allegations unless they are insubstantial. *See, e.g., Bray* v. *Alexandria Women's Health Clinic*, 113 S. Ct. 753, 768 (1993).

This Court explained the proper approach to jurisdictional allegations in *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation*, 484 U.S. 49 (1987). There the Court rejected the argument that allegations sufficient to establish constitutional standing routinely must be proved as a matter of fact before a case could proceed to trial, an argument similar to petitioners' concern here that questions of causation must be finally resolved before jurisdiction under the Extension Act can be determined. *See* City Br. at 39-40. As this Court explained, the contention "fails to recognize that our standing cases uniformly recognize that allegations of injury are sufficient to invoke the jurisdiction of a court." 484 U.S. at 65. The allegations may be challenged at the jurisdictional stage, and if the

objecting party shows that the allegations are sham and raise no genuine issue of fact, the case should be dismissed for want of jurisdiction. Otherwise "the case proceeds to trial on the merits, where the plaintiff must prove the allegations in order to prevail." *Id.* at 66. As the Court concluded, however, "the Constitution does not require that the plaintiff offer this proof as a threshold matter in order to invoke the District Court's jurisdiction." *Id.* So too here the issue of causation need not be resolved as a threshold matter to invoke jurisdiction under the Extension Act.[11]

3. *Neither this Court's cases nor the history of the Admiralty Extension Act justifies a departure from the plain meaning of the Act.* Petitioners rely on dicta from *Gutierrez* v. *Waterman Steamship Corp., supra,* as support for their "special rule". The case is an odd one to be featured so prominently in petitioners' briefs, *see* City Br. at 12, 42-43, 44; Grubart Br. at 21, 32, because the *holding* of the case rejected an argument—similar to that pressed by petitioners here—that admiralty jurisdiction should be defeated "because the impact of [the] alleged lack of care" was felt on land rather than on navigable waters. 373 U.S. at 209. As the Court held, "[w]hatever validity this proposition may have had until 1948, the passage of the Extension of Admiralty Jurisdiction Act * * * swept it away when it made vessels on navigable water liable for damage or injury 'notwithstanding that such damage or injury be done or consummated on land.'" *Id.* (quoting 46 U.S.C. App. § 740).

Gutierrez involved a longshoreman who suffered injury when he slipped on loose beans spilled on a dock from broken and defective bags unloaded from a ship. He filed a libel in admiralty against the ship, claiming that its owner caused his injuries. This Court upheld jurisdiction—even though the shipowner denied that it caused the injury—in reliance on the Extension Act. The Court noted that while the defendant raised "[v]arious far-

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[11] *Gwaltney* is also a complete answer to petitioners' reliance on *Crowell* v. *Benson*, 285 U.S. 22 (1932).

fetched hypotheticals" testing the reach of the Act, it was sufficient to hold that jurisdiction existed when, as in the case before the Court, "the impact * * * is felt ashore at a time and place not remote from the wrongful act." *Id.* at 210.

Petitioners contend that "a time and place not remote from the wrongful act" are judicially-implied limitations on the scope of the Extension Act, distinct from the limitations in the Act itself. They are not. The Act contains its own express limitations; additional ones need not and may not be judicially implied. *See Hallstrom* v. *Tillamook County*, 493 U.S. 20, 27 (1989) ("we are not at liberty to create an exception where Congress has declined to do so"); *Andrus* v. *Glover Construction Co.*, 446 U.S. 608, 617 (1980). The Court in *Gutierrez*, in disposing of the "[v]arious far-fetched hypotheticals," was simply referring to the Act's own express limitation that the vessel *cause* the injury. The Act authorizes jurisdiction over "*all* cases of damage or injury * * * caused by a vessel on navigable water" (emphasis added). The more "far-fetched" the hypothetical, the less possible it will be to allege that the vessel "caused" the injury.

Nor does this Court's decision in *Victory Carriers, Inc.* v. *Law*, *supra*, support the City's call for a "special rule" limiting the reach of the Extension Act to only *some* cases of injury caused by a vessel on navigable water. In *Victory Carriers*, the Court held that there was no admiralty jurisdiction over a claim by a longshoreman injured by an alleged defect in his stevedore employer's pier-based forklift, which the longshoreman was operating on a dock to transfer cargo to a point alongside a vessel. The Admiralty Extension Act had no application whatever to the case, because the injury was in no sense "caused by a vessel on navigable water." 46 U.S.C. App. § 740. This Court made that clear in *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249 (1972), noting that it has held that "there is no admiralty jurisdiction under the

Extension of Admiralty Jurisdiction Act over suits brought by longshoremen injured while working on a pier, when such injuries were caused, *not by ships*, but by pier-based equipment. *Victory Carriers, Inc.* v. *Law*." 409 U.S. at 260-261 n.8 (emphasis added). Indeed, this Court in *Victory Carriers* distinguished *Gutierrez* on that ground, noting that in *Gutierrez* "federal admiralty jurisdiction was clearly present since the Admiralty Extension Act on its face reached the injury there involved." 404 U.S. at 210. The Court in *Victory Carriers* did not rewrite the Extension Act by adopting any special remoteness rule; it simply ruled that the Act on its face did not apply.

Given the clarity of the language of the Extension Act, petitioners bear an "exceptionally heavy" burden of persuasion in arguing that Congress meant something other than what it said. *Patterson* v. *Shumate*, 112 S. Ct. 2242, 2248 (1992); *Union Bank* v. *Wolas*, 112 S. Ct. 527, 530 (1991). Although there is no call for resort to legislative history in this case, *see City of Chicago* v. *Environmental Defense Fund*, 114 S. Ct. 1588, 1593 (1994), nothing in that history remotely suggests that this is one of those "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)).

As this Court has noted, the Extension Act was passed to overrule cases declining to uphold admiralty jurisdiction in situations in which a vessel on navigable water caused damage to a person or property not on navigable water. *See Victory Carriers, Inc.* v. *Law*, 404 U.S. at 208-209. The City contends that the legislative history shows that only a "modest expansion" of jurisdiction was intended, because the cases the Act was designed to repudiate involved damage to structures "on the shore." City Br. at 43. But the language Congress enacted into law provided jurisdiction notwithstanding that the damage

be done "on land," not "on shore." [12] And in any event, throughout the only pieces of legislative history available, Congress stated its intent to provide for admiralty jurisdiction when injury occurs "upon land"—not any more limited concept of "on shore." [13]

Finally, the City's tests focusing on whether an injury is "reasonably contemporaneous[]" and not "at a place

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[12] *See Morales* v. *Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2038 n.2 (1992) ("legislative history need not confirm the details of changes in the law effected by statutory language before we will interpret that language according to its natural meaning"); *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 592 (1980) ("it would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute").

[13] *See* S. Rep. No. 1593, 80th Cong., 2d Sess. 1 (1948) (legislation addressed to problem that "[u]nder existing law, admiralty and maritime jurisdiction in respect of claims arising out of maritime torts is extended by the United States courts to only those cases where injury is done upon navigable waters, and not to those where injury is done to persons or property situated *upon land*, even though the injury is caused by a vessel situated on navigable waters") (emphasis added); H.R. Rep. No. 1523, 80th Cong., 2d Sess. 1 (1948) (same); S. Rep. No. 1593, *supra*, at 2 (problem is "the denial of admiralty jurisdiction in cases where injury is done *on land*") (emphasis added); H.R. Rep. No. 1523, *supra*, at 2 (same). Thus, while the City refers to "structures on the shore," City Br. at 43, the legislative history refers to "land structures." *See* S. Rep. No. 1593, *supra*, at 3 (letter from Acting Secretary of the Navy); H.R. Rep. No. 1523, *supra*, at 3 (same); S. Rep. No. 1593, *supra*, at 4 (letter from United States Maritime Commission); H.R. Rep. No. 1523, *supra*, at 5 (same).

The City stretches the concept of legislative history far beyond the snapping point in relying not on committee reports, legislative debate, or even committee hearings, but on the proceedings of private organizations 11 to 17 years prior to passage of the Act. *See* City Br. at 44 n.22. Even then the material is cited not for affirmative evidence supporting petitioners' view that "all cases" and "on land" in the statute actually mean "some cases" and "on shore within the reach of the vessel," but simply for lack of specific discussion of how far an Act that would not be passed for more than a decade should reach.

farther from navigable waters than the reach of the vessel, its appurtenances, and cargo" (City Br. at 45) are wholly unworkable and would lead to absurd results. If a vessel on navigable water were to strike a levee and cause flooding downstream, under the City's "special rule" admiralty jurisdiction would cover the claims of an owner whose building on shore was damaged, but not the claims of owners of buildings one block, two blocks, or three blocks inland—even though the flooding was allegedly caused by the same maritime activities on navigable water —because the latter owners are beyond "the reach of the vessel, its appurtenances, and cargo." If the fire at issue in *Sisson* had spread a block inland from the shore, the City would apparently contend that injuries at that point would be outside admiralty, even though other injuries from the same fire closer to shore would be in admiralty. Any attempt at such line-drawing re-introduces the very arbitrariness Congress thought it was eliminating when it passed the Extension Act, and provided that "all cases" of injury caused by a vessel on navigable water were within the admiralty jurisdiction, notwithstanding that the injury was consummated "on land". The Seventh Circuit below was correct in ruling that it would "not allow the fortuitous existence of an elaborate tunnel system, which simply transported the moving water away from the original breach and spread the damage, to defeat jurisdiction." Pet. App. 9a (footnote omitted).

C. Great Lakes' Allegedly Negligent Maritime Repair Work Posed A Threat To Maritime Commerce

Remarkably, the City contends that the requirement of a potential hazard to maritime commerce was not satisfied in this case. City Br. at 46. This in the face of the fact that the Chicago River was *closed* for more than a month because of the incident that gave rise to the alleged wrong and prompted the complaint for limitation of liability in admiralty. Pet. App. 2a & n.1. As the District Court recognized, "[r]iver traffic ceased, several commuter ferries were stranded, and many barges could not

enter the river system even south of Cermak Road because the river level was lowered to aid repair efforts." *Id.* at 22a. As the Court of Appeals noted, there was not only the potential for disruption of maritime commerce—the potential was realized. *Id.* at 10a.

The City seeks to avoid this conclusion by focusing on where the damage occurred, rather than on the incident giving rise to the alleged wrong. According to the City, the incident is water damage to basements, which poses no particular threat to maritime commerce. City Br. at 46. Once again the Admiralty Extension Act refutes the City's logic.

If the City were correct, admiralty jurisdiction would turn on whether the damage caused by a vessel on navigable water occurred on water or land. If as a result of negligent replacement of dolphins the pilings became loose, wedged in between the bridge supports, and blocked the navigable channel, the City would presumably acknowledge that the threat to commercial maritime activity requirement was satisfied.[14] But if as a result of the *same* negligence the pilings blocked the flow from a pipe emptying into the river and caused flooding in a building several blocks inland, the City would argue that the requirement was not met. Jurisdiction, under the City's view, would turn on whether the damage or injury was sustained on water or on land. But the Extension Act specifies that jurisdiction extends to "all cases of damage or injury * * * caused by a vessel on navigable water, *notwithstanding* that such damage or injury be done or consummated on land." 46 U.S.C. App. § 740 (emphasis

[14] The City concedes as much. *See* City Br. at 21 ("if Great Lakes had negligently placed a piling in a navigable channel, where a vessel subsequently struck it and was damaged, the nexus to the federal interest in applying uniform rules that protect the free flow of maritime commerce would plainly be sufficient under *Sisson* to allow the exercise of federal jurisdiction"); *id.* at 47 ("the installation of pilings from barges has the potential to disrupt maritime commerce").

added). Applying the potential hazard to maritime commerce test as the City does is clearly inconsistent with the Extension Act.

It is also inconsistent with *Sisson*. This Court in *Sisson* explained that "a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity." 497 U.S. at 363. The Court then described the "general features" of the incident before it as "a fire on a vessel docked at a marina on navigable waters." *Id.* There was no reference in characterizing the pertinent incident to what specific damage was caused, and certainly no reference to where any such damage happened to occur. Indeed, the Court in *Sisson* expressly rejected the argument that the threat to commerce was minimal because no commercial vessels were docked at the marina, because the pertinent inquiry is not concerned with what was damaged or where, but rather with whether the general features of the incident pose a threat to maritime commerce.

Under the City's view, if embers from the fire aboard the yacht in *Sisson* had been borne inland by the wind and ignited a house on land, the City would say the "incident" was the burning of a house on land, which poses no more threat to maritime commerce than a flood in a basement. But jurisdiction in *Sisson* depended on the fact that "a fire on a vessel docked at a marina on navigable waters * * * plainly satisf[ies] the requirement of potential disruption to commercial maritime activity." 497 U.S. at 363. Under the Admiralty Extension Act, it cannot matter where the injury from such an incident occurs.

The *Sisson* Court reiterated the point by recalling the analysis in *Foremost Insurance Co.* v. *Richardson*, 457 U.S. 668 (1982). The Court explained that "we supported our finding of potential disruption [in *Foremost*] with a description of the likely effects of a collision at the mouth of the St. Lawrence Seaway, an area heavily traveled by commercial vessels, even though the place

where the collision actually had occurred apparently was 'seldom, if ever, used for commercial traffic.' " 497 U.S. at 363 (quoting *Foremost*, 457 U.S. at 670 n.2). Where the injury actually occurred is not pertinent in assessing whether the incident that gave rise to the injury poses a threat to maritime commerce.

D. Great Lakes' Maritime Repair Work Was Substantially Related To Traditional Maritime Activity

The Court of Appeals correctly determined that the activity in which Great Lakes was engaged was substantially related to traditional maritime activity. Pet. App. 10a-11a. As the court explained, the dolphins being replaced by Great Lakes were intended to protect not only the bridges from passing ships, but also ships from the damage that might be caused were they to allide with the bridge. Although the City's contract specifications originally called for steel dolphins, that specification was changed to timber in part due to concerns raised by the United States Coast Guard. *See* J.A. 13; Ct. App. Appendix 83. As explained in an affidavit by the Coast Guard official who advised the City it would need to undergo additional permit application and review procedures to shift from timber to steel, timber dolphins afford greater protection to vessels than steel dolphins. J.A. 46; *see id.* at 52-53, 59-60.[15]

The dolphins also serve as aids to navigation. When towing large barges or flotillas of barges, or empty barges in high winds, tugboat pilots often lay up against timber dolphins to realign the barges, or use the dolphins as a fulcrum to help swing the barges around a turn, a maneuver known as "warping". *See* J.A. 46, 53, 57, 59. The

[15] Protection of the bridge itself is in any event related to protection of navigation. The Kinzie Street bridge is a "bascule" bridge, which opens to permit passage of masted traffic. If as a result of being struck the bridge were damaged and could not function, masted traffic would no longer be able to navigate under the bridge. *See* Ct. App. Appendix 18.

dolphins also aid navigation by serving as markers of the river channel, especially where the channel narrows and turns, as with the Chicago River at Kinzie Street. *See id.* at 53, 59. *See also CSX Transportation, Inc.* v. *M/V Hellesport Mariner*, 1991 WL 173045 (4th Cir. Sept. 10, 1991) (dolphins aid sighted navigation and are used as pivots for turning).

These various purposes are "unquestionably related to maritime activity." Pet. App. 11a. Put simply, if there were no navigation on the River, there would have been no need for the dolphins. Replacement of the dolphins was therefore clearly related to the traditional maritime activity of navigation. The Seventh Circuit's conclusion is in accord with at least a century of cases holding that installation and repair of pilings by vessels in navigable water, and maritime repair work generally, are within the admiralty jurisdiction.[16]

[16] *See, e.g., Shea* v. *Rev-Lyn Contracting Co.*, 868 F.2d at 518 (barge crew was engaged in traditional maritime activity when repairing bridge because crew maintained and loaded the vessel and "the types of repairs performed by [the defendant] must generally be accomplished through the use of boats, their crews, and other maritime instrumentalities"); *Nelson* v. *United States*, 639 F.2d 469, 472 (9th Cir. 1980) (construction of barrier to protect vessels from heavy waves is "an activity closely connected with traditional maritime activity"); *In re The V-14813*, 65 F.2d 789, 790 (5th Cir. 1933) ("[t]here are many cases holding that a dredge, or a barge with a pile driver, employed on navigable waters, is subject to maritime jurisdiction"); *In re New York Dock Co.*, 61 F.2d 777 (2d Cir. 1932) (admiralty case involving accident caused by barge driving piles for a Harlem River dock); *In re P. Sanford Ross, Inc.*, 196 F. 921 (E.D.N.Y. 1912) (accident caused by pile driving barge was within admiralty jurisdiction), *rev'd on other grounds*, 204 F. 248 (2d Cir. 1913); *Lawrence* v. *The Flatboat*, 84 F. 200 (S.D. Ala. 1897) (upholding admiralty jurisdiction over wage claim by crewman on pile driver used to construct navigation bulkhead because crewman's services were "maritime in their character"), *aff'd sub nom. Southern Log Cart & Supply Co.* v. *Lawrence*, 86 F. 907 (5th Cir. 1898).

Although some of these cases were decided before this Court formulated its "traditional maritime activity" test in *Executive*

Although the specific maritime repair work engaged in by Great Lakes in this case is itself a traditional maritime activity, it is important to recognize that this prong of the *Sisson* test is not so exacting. The Court asks only whether the "general character of the activity" giving rise to the incident bears a "substantial relationship" to traditional maritime activity. 497 U.S. at 364-365. The "general character of the activity" is maritime repair work, which—even if not considered "traditional maritime activity" itself—certainly bears a "substantial relationship" to traditional maritime activity. Indeed, this Court in *Sisson* identified the "fundamental interest giving rise to maritime jurisdiction" as " 'the protection of maritime commerce' " *id.* at 367 (quoting *Foremost*, 457 U.S. at 674), which is precisely what the dolphins replaced by Great Lakes *do*—protect vessels passing by the bridge from the dangers of allision and aid them in navigating under it.[17]

Jet, they demonstrate that claims arising from activities of the sort engaged in by Great Lakes' vessels have traditionally been cognizable in admiralty. This historical lineage demonstrates that the work undertaken by Great Lakes' vessels is "traditional maritime activity," unlike the aviation activities at issue in *Executive Jet*. *See Sisson*, 497 U.S. at 367 ("The need for uniform rules of maritime conduct and liability is not limited to navigation, but extends at least to any other activities traditionally undertaken by vessels, commercial or noncommercial").

[17] Petitioners' amici misperceive the pertinent inquiry in arguing that negligent pile driving is a "common construction tort" and not a " 'traditional maritime' one." Br. of National Conference, *et al.*, at 23. Use of a defective washer/dryer unit is not a traditional maritime tort either, yet there was jurisdiction in *Sisson*. The question is whether the general activity in which the vessel on navigable water was engaged is substantially related to traditional maritime activity, *see Sisson*, 497 U.S. at 364, not whether the particular tort is traditionally maritime. Here Great Lakes was engaged in maritime repair work on navigable water, at least in part in aid of navigation. That activity is unquestionably substantially related to the traditional maritime activity of navigation.

The conclusion that Great Lakes was engaged in an activity substantially related to traditional maritime activity follows *a fortiori* from *Sisson*. In *Sisson*, this Court found that docking and maintaining a vessel at a marina were substantially related to traditional maritime activity, noting that "[a]t such a marina, vessels are stored for an extended period, docked to obtain fuel or supplies, and moved into and out of navigation. Indeed, most maritime voyages begin and end with the docking of the craft at a marina." 497 U.S. at 367. The connection with actual navigation is far more direct in this case. Maritime repair work of the sort engaged in by Great Lakes permits navigation to occur. It is not simply supportive of navigation prior to and after the voyage, as was the case with the activity at issue in *Sisson*, but during the actual navigation.[18]

The City carries forward its mistaken analysis under the second prong of the *Sisson* test into the third. Viewing the "incident" as the flooding of basements, the City argues that the "activity" giving rise to that incident was its own management of the tunnel. City Br. at 48-49. The City is certainly correct to concede that its "failure to repair the tunnel is the precise reason why water reached plaintiffs' property." *Id.* at 48 (footnote omitted). As explained above, however, the City is quite wrong to regard the flooding of basements—the injury— as the pertinent incident in this case. The Admiralty Extension Act proves that. *See supra* at 24-25. Since the flooding is not the pertinent incident for purposes of the jurisdictional analysis, the City's failure to maintain and repair the

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[18] The City contends that "[n]one of the parties to this case was actually involved in navigation * * *." City Br. at 11. This is factually incorrect: Great Lakes, in performing its obligations under the contract, repeatedly moved its various vessels in the navigable waterway, not only as work progressed but also to clear the channel for other river traffic. *See* Pet. App. 27a. In any event, this Court in *Sisson* specifically rejected the argument that "maritime jurisdiction over torts is limited to torts in which the vessels are in 'navigation'." 497 U.S. at 367.

tunnel is not the pertinent activity. The incident is the alleged negligent replacement of the dolphins, and the activity that gave rise to that is Great Lakes' maritime repair work on navigable water. The general character of that activity is plainly substantially related to traditional maritime activity.

A hypothetical illustrates the significance of this aspect of the *Sisson* test, and demonstrates the error in the City's analysis. Suppose a plane flying over the Chicago River dropped its freight, and the impact of the freight on the riverbed led to the crack in the tunnel which eventually resulted in the flooding of the plaintiffs' basements. The "substantial relationship" element of the *Sisson* test would not be met, and there would be no admiralty jurisdiction, because the activity—carrying freight by air—is not substantially related to any traditional maritime activity.

By the same token, if a ship allided with the Kinzie Street Bridge and the allision caused the crack in the tunnel that eventually led to the flooding of the plaintiffs' basements, there would be admiralty jurisdiction, because the activity—navigation—is substantially related to traditional maritime activity. Yet the City's analysis would treat both cases the same, and find no admiralty jurisdiction in either case—even if in the latter case the plaintiffs were suing the vessel owner as well as the City, and even if the vessel owner invoked admiralty to limit liability—because of its view that the relevant activity in each instance is tunnel maintenance. Our approach—and that of this Court in *Sisson*—meaningfully distinguishes between the two cases, and results in a finding of admiralty jurisdiction here.

II. THIS COURT SHOULD NOT ABANDON THE *SISSON* TEST

In light of the foregoing, it is perhaps not surprising that the bulk of petitioners' briefs is not an argument that they satisfy the *Sisson* test, but instead an argument that

the Court should adopt a new test—one that they can satisfy. Thus, the City argues that a new test for admiralty jurisdiction should be developed "[i]n cases in which the interests of land-based parties are at stake," because "the *Sisson* test does not help sort out these cases." City Br. at 21.

Again the Admiralty Extension Act refutes the City's position. The "interests of land-based parties are at stake" here for one reason and one reason only: because the injury occurred on land. The Extension Act could not be plainer in establishing that such a fortuity does not defeat admiralty jurisdiction; jurisdiction exists under the Act "notwithstanding that [the] damage or injury be done or consummated on land." 46 U.S.C. App. § 740. Developing a different test for admiralty jurisdiction when the "interests of land-based parties are at stake"—*i.e.*, when the injury is consummated on land—would be nothing short of judicial circumvention of the unambiguous terms of the Extension Act.

Contrary to petitioners' contention, nothing in this Court's opinion in *Sisson* suggests that the Court left open the question whether the test in that case applied to a case involving land-based parties. What the Court noted in footnote in *Sisson* was that "all of the *instrumentalities involved in the incident* were engaged in a similar activity" and that "[d]ifferent issues may be raised by a case in which one of the *instrumentalities* is engaged in a traditional maritime activity, but the other is not." 497 U.S. at 365 n.3 (emphases added). The word "instrumentalities" is not synonymous with "parties," as the City would have it. *See* City Br. at 9, 16, 27. "[I]nstrumentalities involved in the incident" refers to those entities involved in bringing about (being instrumental in) the alleged wrong. That does not include victims with no connection to the activity or incident other than allegedly having been harmed by it.

Sisson was not anticipating and reserving the situation in which the injury was done to a land-based party; the

Admiralty Extension Act makes clear that such a happenstance does not defeat jurisdiction. As the Court of Appeals noted, adopting petitioners' view "would render the Admiralty Extension Act meaningless. That act seems explicitly to address situations, like this one, where the injury-causing activity occurs on a vessel on a navigable waterway but the injury itself is felt on land." Pet. App. 9a n.5. *See supra* at 12 n.4.

Nor is there any need to abandon the *Sisson* test and create a new one for situations in which "the interests of land-based parties are at stake." The City is unabashedly result-oriented in explaining why it believes the Court should devise a new test: the City believes it will lose its state-law immunity if admiralty jurisdiction is found to exist, and it does not want to lose that immunity. *See* City Br. at 21, 23, 30. In fact, the City goes so far as to propose a test for jurisdiction that focuses solely on the result on the merits it seeks to avoid—loss of its state-law immunity. Thus, the City contends that the test for *jurisdiction* should track this Court's established test for federal *pre-emption* of state law.

This approach conflates two very different analyses. Whether federal jurisdiction exists is an analytically separate question from what aspects of state law may or may not be pre-empted; looking at pre-emption prior to determining jurisdiction is putting the cart before the horse. This is of course true with respect to federal question jurisdiction generally. It is also true in the admiralty context, as this Court confirmed just months ago in *American Dredging Co.* v. *Miller*, 114 S. Ct. 981 (1994). There was no question that there was admiralty jurisdiction in that case,[19] but this Court concluded that state rather than federal *forum non conveniens* law applied. The Court noted the many situations in which admiralty

[19] The proceeding was actually in state court pursuant to the saving to suitors clause. *See* 28 U.S.C. § 1333(1).

jurisdiction and pre-emption of state law are not co-extensive:

> State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions * * * have been upheld when applied to maritime causes of action * * *. State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity. [114 S. Ct. at 987 (quoting *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 373-374 (1959)).]

The City and its amici point to the numerous cases in which this Court has concluded that state law was not pre-empted by substantive maritime law. *See* City Br. at 29-30; Br. of the National Conference, *et al.*, at 9-12. We of course have no quarrel with those precedents; in fact, they make our point. As the amici acknowledge, "[t]he issue in these cases was what substantive law—state or federal maritime—to apply, and not what forum was proper to hear the dispute." *Id.* at 12. What the City fails to note is that many of the cases it relies upon were in admiralty themselves, and that in upholding the applicability of state law, the Court did not remotely suggest that there was anything improper with the exercise of admiralty jurisdiction.[20] No decision of this Court suggests that the test for jurisdiction should look ahead

[20] *See, e.g., Just* v. *Chambers*, 312 U.S. 383 (1941) (limitation of liability proceeding in admiralty; state wrongful death and survival of action law applied); *Vancouver Steamship Co.* v. *Rice*, 288 U.S. 445, 448 (1933) ("The admiralty court has jurisdiction," lien under state law enforced); *Western Fuel Co.* v. *Garcia*, 257 U.S. 233, 243-244 (1921) (libel in admiralty; "the District Court rightly assumed jurisdiction of the proceedings, but erred in holding the right of action was not barred under the state statute of limitation").

to the merits of the pre-emption issue and turn on a similar weighing of policies and interests. Jurisdiction and law to apply are fundamentally distinct questions; *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938), teaches that. And while there is no doubt that the grant of admiralty jurisdiction carries with it the power to apply federal rules of decision, whether that power may be exercised in any particular instance to displace state law is a separate question, the answer to which does not undermine the existence of jurisdiction in the first place.

Thus, the City is free to argue that the federal District Court sitting in admiralty should not deprive it of its immunity, because in its view there is no need for a uniform federal rule on that question. We certainly would oppose any such argument, and in doing so would rely heavily on this Court's decision in *Workman* v. *Mayor of New York*, 179 U.S. 552 (1900). The point is that any such arguments should be made on the merits of the pre-emption issue, not smuggled into the antecedent jurisdictional question—particularly because the broad sort of policy analysis often engaged in to determine pre-emption is so foreign to the nature of jurisdictional rules.

Justice Frankfurter made just that point in a related context in his opinion for the Court in *Romero* v. *International Terminal Operating Co., supra.* In that case the Court rejected an argument that jurisdiction over maritime claims was granted by 28 U.S.C. § 1331, the "arising under" provision. As the Court explained:

> If jurisdiction of maritime claims were allowed to be invoked under § 1331, it would become necessary for courts to decide whether the action "arises under federal law," and this jurisdictional decision would largely depend on whether the governing law is state or federal. Determinations of this nature are among the most difficult and subtle that federal courts are called upon to make. [358 U.S. at 375.]

The Court rejected the proposal to allow maritime claims to be invoked under Section 1331 in part because doing

so would make the jurisdictional test turn on the choice of law inquiry:

> Federal courts would be forced to determine the respective spheres of state and federal legislative competence, the source of the governing law, as a preliminary question of jurisdiction; for only if the applicable law is "federal" law would jurisdiction be proper under § 1331. The necessity for jurisdictional determinations couched in terms of "state" or "federal law" would destroy that salutary flexibility which enables the courts to deal with source-of-law problems in light of the necessities illuminated by the particular question to be answered. [358 U.S. at 376.]

Yet this is precisely the test petitioners propose for maritime jurisdiction generally: maritime jurisdiction, they argue, should turn on whether state or federal substantive law is to be applied. This Court was correct in 1959 to reject any such approach, and it should do so again today.

Nor are petitioners and their amici correct that a new jurisdictional test must be devised to safeguard interests of federalism. As noted, whether federal law pre-empts state law is a different question from whether there is federal admiralty jurisdiction. In addition, the test for admiralty jurisdiction articulated by this Court in *Sisson* already takes into account federalism concerns, by restricting jurisdiction to those situations in which the alleged wrong arises from an incident (1) on navigable water, (2) with the potential to disrupt maritime commerce, that (3) arises from an activity with a substantial relationship to traditional maritime activity. And to the extent the City argues that the test needs to be modified in the interests of federalism when the wrong injures land-based parties, Congress has already spoken to the issue in the Admiralty Extension Act, specifying that jurisdiction exists "notwithstanding that [the] damage or injury be done or consummated on land." 46 U.S.C. App. § 740.

Perhaps the strongest argument against adopting a new test is the nature of the various tests proposed by petitioners. In the first place, there is scant agreement as to what this new test should be.[21] Grubart apparently calls for the four-factor test articulated seventeen years *prior to* this Court's opinion in *Sisson* by the Fifth Circuit in *Kelly* v. *Smith*, 485 F.2d 520 (5th Cir. 1973), *cert. denied*, 416 U.S. 969 (1974), as later "refined" by the Fifth Circuit—again prior to *Sisson*—by the addition of three more factors in *Molett* v. *Penrod Drilling Co.*, 826 F.2d 1419, 1426 (5th Cir. 1987), *cert. denied*, 493 U.S. 1003 (1989).[22] *See* Grubart Br. at 17-18. Grubart notes that of the seven factors, it regards the "fourth factor in the *Kelly* test [as] the most important." Grubart Br. at 27. Grubart also adds a culinary component to its test, arguing that jurisdiction should not extend to situations that "lack the flavor of maritime law." *Id.* at 7.

Petitioners' amici propose that "a court should examine the complaint to identify 'the conduct alleged to have caused' the tort and ask whether there is a substantial federal maritime interest in providing a uniform rule of decision for the tortious conduct at issue." Br. of the National Conference, *et al.*, at 4.[23] Amici are therefore

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[21] The City acknowledged in its Motion for Divided Argument in this case that "[a]lthough both petitioners agree that the Seventh Circuit was wrong, we agree on very little else in the state or federal litigation." Motion for Divided Argument (May 9, 1994), at 3.

[22] The four *Kelly* factors are (1) the functions and roles of the parties, (2) the types of vehicles and instrumentalities involved, (3) the causation and the type of injury, and (4) traditional concepts of the role of admiralty law. *See* 485 F.2d at 525. The three *Molett* factors are (1) the impact of the event on maritime shipping and commerce, (2) the desirability of a uniform national rule to apply to such matters, and (3) the need for admiralty expertise in the trial and decision of the case. *See* 826 F.2d at 1426.

[23] Petitioners' amici get off on the wrong foot by rephrasing the "Question Presented" in a manner that bears no relation to the facts of this case. Contrary to amici's suggestion, this is hardly a

in direct conflict with the City, which, as noted, contends that courts should not rely on the causation allegations of the complaint. *See supra* at 16-18.

The City views its test as "substantially the same as that of the four dissenters in *Foremost* and as the *Kelly* test," although it claims to have "endeavored to formulate the test with somewhat more precision than *Kelly* did." City Br. at 32 n.17. The "more precise" test proposed by the City is as follows:

> [I]n cases involving land-based parties and injuries, a federal court should satisfy itself that the totality of circumstances reflects a federal interest in protecting maritime commerce sufficiently weighty to justify shifting what would otherwise be state-court litigation into federal court under the federal law of admiralty. [*Id.* at 32.]

The obvious first question is exactly when any of these new tests should apply and when the established *Sisson* test should be followed. *Sisson* itself involved damage to "water-based" parties (the other yachts) and a "land-based" party (the marina). *See* 497 U.S. at 360. The line between injuries to water-based and land-based parties is neither defined by petitioners nor obvious. A single incident involving a vessel on navigable water engaged in traditional maritime activity can often cause injury to both land-based and water-based parties. *Sisson* is one example; this case is another: the incident here led to the closing of the Chicago River, which the District Court found injured those presumably "water-based" entities engaged in commerce on the River. *See* Pet. App. 22a ("River traffic ceased, several commuter ferries were stranded, and many barges could not enter the river system"). Keeping in mind that proceedings under the Limitation Act are intended to bring into court *all* claim-

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situation in which Great Lakes' allegedly tortious conduct "cause[d] damage only to non-maritime parties." Br. of the National Conference, *et al.*, at i. *See supra* at 23-24.

ants against the vessel, how is jurisdiction to be treated under the City's proposal in a case involving injury to both water-based and land-based parties? The *Sisson* test has no difficulty with such a case, since it—consistent with the Admiralty Extension Act—focuses not on where the injury was consummated (land or water) but on the incident and activity giving rise to the wrong.

Petitioners' "totality of the circumstances" test—however well-suited it may be for pre-emption purposes—is peculiarly ill-suited to serve as a jurisdictional test. It is a basic axiom that jurisdictional rules should be clear, simple, easily applied, and lead to predictable results.[24] This Court has acknowledged the value of these features in each of its leading modern admiralty jurisdiction cases. *See Executive Jet*, 409 U.S. at 266 (rejecting application of locality test to aviation cases in part because "the locality test in such cases * * * is sometimes almost impossible to apply with any degree of certainty"); *Foremost*, 457 U.S. at 677 (rejecting commercial/non-commercial distinction because of "the uncertainty and confusion that would necessarily accompany a jurisdictional test tied to the commercial use of a given boat"); *Sisson*, 497 U.S. at 364 n.2 ("all things being equal, simpler jurisdictional formulae are to be preferred"). *See also id.* at 375 (Scalia, J., concurring in the judgment).

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[24] *See, e.g.*, Charles A. Wright, *The Federal Courts After Appomattox*, 52 A.B.A.J. 742, 745 (1966) ("So long as we maintain separate systems of lower courts, it is essential that we draw truly the line that divides their jurisdiction. The line should be bright and clear, so that judicial time is not wasted on cases brought in the wrong court."); Martha A. Field, *The Uncertain Nature of Federal Jurisdiction*, 22 W. & Mary L. Rev. 683, 685 (1981) ("One of the first things we teach entering law students is the importance of clarity in rules governing courts' jurisdiction. One reason for jurisdictional rules to be clear and simple is that litigating at length over the proper forum in which to litigate is a poor use of limited judicial resources").

Jurisdictional tests should be reasonably simple and precise, so that plaintiffs or petitioners can determine with some certainty where to file, preliminary skirmishes over the choice of forum can be minimized, and courts can dispose of jurisdictional challenges promptly and with a high degree of certainty of correctness. The need for clear rules leading to predictable results is heightened by the fact that objections to jurisdiction cannot be waived, and reviewing courts are obligated to raise jurisdictional issues *sua sponte*. A vague, manipulable, and imprecise jurisdictional test generates uncertainty over where to file and prompts forum-shopping, encourages defendants to raise jurisdictional challenges in a larger number of cases, and gives no confidence that district court decisions are correct and will not be overturned after wasteful litigation on the merits.

The imprecision of petitioners' "totality of the circumstances" test is compounded by the fact that the circumstances are to be assessed to determine whether the "policy" underlying admiralty jurisdiction is implicated in a particular case. Although such an approach may be familiar in conflict pre-emption cases, it is utterly foreign to jurisdictional inquiries. Courts do not ask on a case-by-case basis whether a state court will be hostile to an out-of-state defendant in considering whether to uphold diversity jurisdiction, or ask on a case-by-case basis whether state courts will not properly construe federal law in considering whether to uphold federal question jurisdiction. Rather, the court applies a more precise test that reflects the underlying policies, rather than looking to the policies in each case. Petitioners have cited no instance—and we are aware of none—in which jurisdiction hinges on such an ad hoc policy assessment.

Both the City's and Grubart's proposed tests expressly call for a "balancing of federal and state interests," directing courts to "assess the competing federal and state interests at stake." City Br. at 10, 31; *see* Grubart Br. at 28, 37. Whatever value such an approach may have in other

areas, an ad hoc, totality of the circumstances, policy-based balancing test is woefully unsuited to answering the threshold jurisdictional question of where a complaint should be filed. It is also inconsistent with *Sisson*, in which this Court expressly eschewed a "fact-specific jurisdictional inquiry," and emphasized that the pertinent "activity" for purposes of jurisdictional analysis is *not* defined "by the particular circumstances of the incident." 497 U.S. at 364.[25]

Consider what a party trying to determine whether or not its complaint should be filed in admiralty would need to consider under petitioners' theory of jurisdiction: First, it would need to decide whether the case would be subject to this Court's *Sisson* analysis, or instead analyzed under petitioners' alternative approach for cases in which interests of "land-based parties" are at stake (apparently to some greater extent than they were in *Sisson*). If the latter, the party would need to weigh at least seven factors, taken from the *Kelly* and *Molett* tests: the functions and roles of the parties, the types of vehicles and instrumentalities involved, the causation and type of injury, traditional concepts of the role of admiralty law, the impact of the event on maritime shipping and commerce, the desirability of a uniform national rule to apply to such matters, and the need for admiralty expertise in the trial and decision of the case. These seven factors are simply an illustrative starting list; the party would need to weigh the "totality of the circumstances" in assessing jurisdiction. It would further need to decide whether that "totality of the circumstances reflects a federal interest in protecting maritime commerce sufficiently weighty to justify shifting

[25] *See also Zoelsch* v. *Arthur Andersen & Co.*, 824 F.2d 27, 32 n.2 (D.C. Cir. 1987) (extraterritorial jurisdiction over securities law claims) ("it would also seem counterproductive to adopt a balancing test, or any test that makes jurisdiction turn on a welter of specific facts. * * * [S]uch tests are difficult to apply and are inherently unpredictable. * * * They thus present powerful incentives for increased litigation on the jurisdictional issue itself * * *.").

what would otherwise be state-court litigation into federal court." City Br. at 32. The party would need to "balance federal and state interests" in making that judgment, *id.* at 30, and somehow determine whether the situation has "the flavor of maritime law." Grubart Br. at 7. In applying the Admiralty Extension Act, it would need to weigh whether any injury done or consummated on land was done or consummated near enough to the water to be within "the reach of the vessel, its appurtenances, and cargo," and whether the injury occurred "reasonably contemporaneously" with the negligent conduct. City Br. at 45. All this to determine in which court to file.

This is not a jurisdictional test; it is an invitation to chaos. The Court should decline the invitation and reaffirm the applicability of the more focused analysis in *Sisson*.

III. THE ADMIRALTY EXTENSION ACT AND THE LIMITATION OF VESSEL OWNER'S LIABILITY ACT PROVIDE INDEPENDENT BASES FOR FEDERAL ADMIRALTY JURISDICTION

A. Quite apart from the foregoing, the Admiralty Extension Act, 46 U.S.C. App. § 740, provides an independent basis of federal jurisdiction over Great Lakes' complaint.[26] As noted, the language of the Extension Act is clear:

[26] Great Lakes cited the Extension Act as a basis of jurisdiction in its complaint, J.A. 31, and has preserved that argument at every stage of this litigation. *See* Pet. App. 31a-32a; Ct. App. Br. of Appellant at 1, 4, 38-41; Ct. App. Reply Br. of Appellant at 4-6, 16-17. In its two most recent admiralty jurisdiction cases, this Court has been careful to note the argument that the Extension Act provides an independent basis of jurisdiction, but has not found it necessary to decide the issue. *See Sisson*, 497 U.S. at 358-359 n.1; *Foremost*, 457 U.S. at 677 n.7. Here the Court need address the question only if it concludes, contrary to the foregoing submission, that 28 U.S.C. § 1333(1) and the Extension Act together fail to support jurisdiction in this case.

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. [46 U.S.C. App. § 740.]

As explained above, this is a case involving "damage or injury to * * * property," allegedly "caused by a vessel," *see supra* at 13-19, "on navigable water," *see supra* at 10-11. It is therefore "include[d]" within the "admiralty and maritime jurisdiction of the United States."

The City adopts a strained construction of the statute to avoid this natural reading. According to the City, "[t]he Admiralty Extension Act merely extends 'admiralty and maritime jurisdiction,' whatever that is, to certain land-based injuries." City Br. at 33 & n.18. But when we say "diversity jurisdiction extends to cases involving parties from different States," or "federal question jurisdiction extends to cases arising under a federal statute," the natural meaning conveyed is that "cases involving parties from different States" defines diversity jurisdiction, and "cases arising under a federal statute" defines federal question jurisdiction, not that "diversity jurisdiction" or "federal question jurisdiction" have some *a priori* meaning limiting the plain language of the defining clause.[27] Here 46 U.S.C. App. § 740 describes a category of cases to which the admiralty and maritime jurisdiction of the United States extends: those cases "of damage or injury, to person or property, caused by a vessel on navigable water," whether or not the damage or injury is consummated on land.

In addition, the City's argument ignores the fact that the statute by its terms does *not* "merely extend[] 'admiralty and maritime jurisdiction,' whatever that is, to certain land-based injuries." City Br. at 33 & n.18. The statute also specifies that admiralty jurisdiction shall "include" the described category of cases. So, to use the City's phraseology, whatever admiralty and maritime jurisdiction is, we know it "include[s] all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 46 U.S.C. App. § 740.

The District Court below agreed with petitioners, concluding that jurisdiction under the Extension Act was limited by the same "maritime relationship" test applicable to jurisdiction under 28 U.S.C. § 1333(1), even though no such restriction is specified by the terms of the statute. According to the District Court, "[c]laims under the Admiralty Extension Act are to be subject to the 'maritime relationship' rule of *Executive Jet*."[28] That reasoning suffers from a glaring anachronism. Congress passed the Extension Act in 1948; *Executive Jet* was decided and introduced the 'maritime relationship' rule under 28 U.S.C. § 1333(1) in 1972. When the Extension Act was passed, jurisdiction under 28 U.S.C. § 1333(1) was determined by the strict situs test. Congress could hardly have implicitly limited the scope of the language of the Extension Act to conform to a limitation in Section 1333(1) that would not be announced for another 24 years.[29]

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[27] The use of the word "extend" to define the content of a jurisdictional grant is natural enough; that is, after all, the formulation used in Article III. *See* U.S. Const. Art. III, § 2 ("The judicial Power shall extend to * * *.").

[28] Pet. App. 32a (citing, *inter alia*, *Crotwell* v. *Hockman-Lewis, Ltd.*, 734 F.2d 767 (11th Cir. 1984); *Sohyde Drilling & Marine Co.* v. *Coastal States Gas Producing Co.*, 644 F.2d 1132 (5th Cir.), *cert. denied*, 454 U.S. 1081 (1981). The Court of Appeals found jurisdiction under 28 U.S.C. § 1333(1) and the Extension Act, and thus had no occasion to consider whether the Extension Act alone conferred jurisdiction.

[29] *See* 1 Steven F. Friedell, *Benedict on Admiralty* § 173, at 11-40 - 11-41 (7th ed. 1993) ("One could argue that Congress did not intend to impose a maritime nexus requirement in the [Extension] Act. At the time that the Act was passed, it was generally thought that no maritime nexus was required. And under the Commerce Clause,

B. The Limitation of Vessel Owner's Liability Act, 46 U.S.C. App. § 181, *et seq.*, also provides an independent basis for federal court jurisdiction of Great Lakes' complaint under that Act.[30] As first enacted in 1851, the Limitation Act was understood to confer on the courts jurisdiction that was co-extensive with traditional maritime jurisdiction. *See, e.g., Ex Parte Phenix Ins. Co.*, 118 U.S. 610 (1886). In *Richardson* v. *Harmon*, 222 U.S. 96 (1911), however, this Court held that an 1884 amend-

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Congress could extend admiralty jurisdiction without requiring a maritime nexus.") The treatise ultimately rejects this argument, but for an entirely unpersuasive reason. According to the treatise, this construction should be rejected because while the Extension Act makes clear that torts consummated on land are not for that reason less entitled to be considered maritime than torts consummated at sea, there is no reason to think torts consummated on land are to be preferred. But nothing in the plain language reading of the Extension Act would prefer torts consummated on land; the Act extends jurisdiction equally to cases of injury caused by a vessel on navigable water, regardless of where the injury is consummated. The result of viewing the Extension Act as an independent basis of jurisdiction is thus similar to the test proposed in the opinion concurring in the judgment in *Sisson*. *See* 497 U.S. at 373 ("a tort occurring on a vessel conducting normal maritime activities in navigable waters—that is, as a practical matter, every tort occurring on a vessel in navigable waters—falls within the admiralty jurisdiction of the federal courts") (Scalia, J., concurring in the judgment).

[30] Great Lakes raised this argument before both the District Court and the Court of Appeals. *See* Ct. App. Br. of Appellant at 41 n.10; Great Lakes' Memorandum in Opposition to the Motions to Dismiss at 13 n.8. The District Court rejected Great Lakes' argument on the basis of the Seventh Circuit's earlier decision in *Complaint of Sisson*, 867 F.2d 341, 348-350 (7th Cir. 1989), *rev'd on other grounds*, *Sisson* v. *Ruby*, *supra*. *See* Pet. App. 41a-42a. In light of its holding on the question of admiralty jurisdiction, the Seventh Circuit below did not reach the question of whether the Limitation Act constituted an independent basis for jurisdiction. *See* Pet. App. 11a n.8. This Court in *Sisson* also found it unnecessary to reach the question, given its finding that jurisdiction existed under 28 U.S.C. § 1333(1). *See* 497 U.S. at 358-359 n.1.

ment to the Act—now codified at 46 U.S.C. App. § 189—changed that result.

Richardson involved an action under the Limitation Act resulting from the allision of a barge and a drawbridge. The district court had dismissed the action for want of jurisdiction, holding that the claim "was for a non-maritime tort, not cognizable in a court of admiralty, and that the limited liability act of Congress did not extend to any such right of action." 222 U.S. at 101. This Court reversed. The Court noted that the language of the amendment evinced an intent to expand the previous protection of the Limitation Act, consistent with the general purpose of Congress "to further encourage the ship-owning industry." *Id.* at 104. Accordingly, the Act applied to "all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime * * *." *Id.* at 106. The decision reversing the district court's finding of lack of jurisdiction established that the Limitation Act is as an independent source of federal court jurisdiction quite apart from traditional admiralty jurisdiction.

Richardson has long been understood in this way.[31] It has not been overruled, nor have the relevant portions of the Limitation Act been modified by Congress. Ac-

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[31] *See, e.g., Just* v. *Chambers*, 312 U.S. at 386 (Limitation of Liability Act "extends to tort claims even when the tort is non-maritime"); *United States* v. *Matson Nav. Co.*, 201 F.2d 610, 616 (9th Cir. 1953) ("The Supreme Court upheld the Act in *Richardson* * * * even though it considered the Act as an extension of admiralty jurisdiction to theretofore non-maritime torts"); *The Trim Too*, 39 Supp. 271, 273 (D. Mass. 1941) (Proceedings under Limitation Act "form an independent head of jurisdiction without regard to whether the claims limited against are such as might be sued upon in admiralty or not") (quoting the then-current edition of *Benedict on Admiralty*); 1 Friedell, *Benedict on Admiralty* § 225, at 11-46 ("Proceedings by vessel owners to limit their liability * * * are within the admiralty jurisdiction even if the claims limited against might not be sued upon in admiralty").

cordingly, under the established precedent of this Court, the Limitation Act provides an independent basis for jurisdiction over Great Lakes' complaint.

Several courts, however, have determined that they need not abide by this authority.[32] In *Complaint of Sisson*, for example, the Seventh Circuit held that adoption of the Admiralty Extension Act and developments in the law of admiralty jurisdiction generally permitted it to ignore this Court's holding in *Richardson*. Neither basis supports the conclusion. As to the former, it has been asserted that the Extension Act "eliminate[s] the need * * * for the rule established by [*Richardson*]." *Complaint of Sisson*, 867 F.2d at 349. The conclusion that *Richardson* is no longer good law because of the passage of the Admiralty Extension Act rests on the curious assertion that Congress adopted a statute to codify the rule of *Richardson* that somehow eliminates the holding of *Richardson*. That is plainly not the case. Nor does the development of the maritime nexus test obviate the rule of *Richardson*. A judicially-created requirement of a maritime nexus simply has no role to play in the context of a statute that has long been recognized to reach non-maritime torts.[33] The Limitation Act accordingly provides a jurisdictional basis for Great Lakes' complaint whether or not the Court finds the case to be within general admiralty jurisdiction.

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[32] *See Guillory* v. *Outboard Motor Corp.*, 956 F.2d 114, 115 (5th Cir. 1992); *David Wright Charter Serv.* v. *Wright*, 925 F.2d 783, 785 (4th Cir. 1991) (per curiam); *Three Buoys Houseboat Vacations U.S.A. Ltd.* v. *Morts*, 921 F.2d 775, 779-780 (8th Cir. 1990), *cert. denied*, 112 S. Ct. 272 (1991); *Lewis Charters, Inc.* v. *Huckins Yacht Corp.*, 871 F.2d 1046, 1052-54 (11th Cir. 1989).

[33] The *Executive Jet* Court itself noted that the rule it adopted, which defeated admiralty jurisdiction in that case, applied "in the absence of legislation to the contrary." 409 U.S. at 274.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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